

# DECISION



THE COMPTROLLER GENERAL  
OF THE UNITED STATES  
WASHINGTON, D. C. 20548

FILE: B-156407

DATE: JUL 14 1976

MATTER OF: W. S. Brandenburg, Herbert C. Johnson  
and William E. Thompson - Overtime compensation

- DIGEST:
1. Claims of civilian guards for overtime compensation denied prior to Baylor v. United States, 198 Ct. Cl. 331 (1972) on basis that any early reporting was offset by paid lunch period are again denied on same basis.
  2. Claims of civilian guards who request reconsideration of their claims for overtime compensation denied prior to Baylor decision, which only present issue of whether overtime was properly authorized, will be forwarded to employing agency for determination in light of Baylor standards. Agency should pay or deny such claims, only referring doubtful claims to Comptroller General.
  3. Claims of civilian guards who request reconsideration of their claims for overtime compensation denied prior to Baylor decision, which present issue previously resolved against claimant, other than issue of proper authorization, should be initially handled in accordance with procedures generally applicable to requests for reconsideration.
  4. Claims of civilian guards for overtime compensation presented for first time pursuant to decision in Baylor and for periods prior to effective date of Fair Labor Standards Amendments of 1974 should be forwarded to employing agency for payment or denial of claim in accordance with law as established in Baylor. Only claims considered doubtful or reclaims should be forwarded to Comptroller General for decision.
  5. Employee, cook at Chanute Air Force Base, claimed overtime for early reporting and delayed leaving. Claim is disallowed since record indicates that, although he was required to wear "Mess White" uniforms, there was no requirement for early reporting or leaving and he had the option to wear uniform to and from work.

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B-156407

This decision concerns the claims of W. S. Brandenburg, Herbert C. Johnson, and William E. Thompson for overtime compensation believed due incident to their employment with the Government. The claims cover periods prior to the effective date of the overtime provisions of the Fair Labor Standards Amendments of 1974, Public Law 93-259, approved April 8, 1974, 38 Stat. 55 et seq.

In B-174069, September 11, 1974, we set forth procedures to be employed in handling overtime compensation claims in accordance with the standards enunciated in Baylor v. United States, 198 Ct. Cl. 331 (1972). The present decision amplifies and modifies procedures for handling such claims.

The claims of W. S. Brandenburg and Herbert C. Johnson, which were 2 of 39 similar claims for overtime pay for early reporting were received in our Claims Division in September 1964. Mr. Brandenburg's claim was developed by the Department of the Navy as a typical case and was returned for adjudication. The claim was disallowed since, while the early reporting time was required, such time was more than offset by lunch periods taken on Government time. The matter was reconsidered and in decision B-156407, July 7, 1955, the disallowance was sustained.

On October 17, 1974, the Department of the Navy forwarded to our Transportation and Claims Division (now Claims Division) a new claim from Mr. Brandenburg on the same matter based on the decision in Baylor v. United States, 198 Ct. Cl. 331 (1972). The claim was returned to the Department of the Navy on January 16, 1975, in accordance with decision B-174069, September 11, 1974. On May 15, 1975, the claim was returned to us for a decision. The Navy stated that the claim was returned to GAO in accordance with B-174069, September 11, 1974, which reads in pertinent part as follows:

" \* \* \* If, on further developing the record of any appeal, however, the employing agency still has doubts as to the propriety of paying the employee for overtime or if the employing agency still feels payment should not be made, the appeal and developed record should be forwarded to the Comptroller General for a decision."

The facts with respect to the claim of Mr. Herbert C. Johnson are essentially the same as the facts supporting the claim of Mr. Brandenburg. Based upon our Claims Division's disallowance of the claim of Mr. Brandenburg, which was submitted as a typical

claim, the Department of the Navy disallowed the claims of 38 other individuals, including Mr. Johnson. At the request of the President of the National Federation of Federal Employees the matter was reconsidered and the disallowance of the claims of the 39 employees was sustained by Comptroller General decision B-156407, dated July 7, 1965. The only difference in the status of Mr. Johnson's new claim and the claim of Mr. Brandenburg is that Mr. Brandenburg's claim was submitted first to the Department of the Navy, which referred the claim to GAO, while Mr. Johnson submitted his new claim directly to GAO. Both claims were subsequently referred to the Department of the Navy for development of the record and for a determination of the merits.

The Baylor decision altered the standard used to determine whether the proper official authorized overtime. Prior to Baylor the standard was whether the overtime was specifically ordered by a competent regulation. The standard enunciated in Baylor is whether the employees were induced by their superiors to perform overtime. In B-174069, supra, it was stated that:

" \* \* \* since the standards of law used prior to Baylor to determine the propriety of claims for overtime compensation were erroneous, the correct standards as set out in Baylor and as explained in our decision of 53 Comp. Gen. 489, supra, must now be applied to appeals of those adverse settlements made prior to Baylor \* \* \*."

The only pre-Baylor standards found to be erroneous are those concerning whether the overtime was authorized or approved. Thus, only those cases which were decided against the claimant on the basis that the alleged overtime was not properly authorized and approved require redetermination in light of the Baylor standards.

Claims presenting only the issue of whether the overtime was properly authorized and approved should be initially decided by the employing agency. Such claims received by GAO will be transmitted to the employing agency since there has not been any agency determination of the issue in light of the Baylor standards. The agency has authority to pay such claims in which it has no doubt as to the legality of payment. Similarly, the agency may deny claims on the basis that the overtime was not authorized or approved in accordance with the Baylor standards. Such claims should be submitted to GAO for adjudication only if the claim is considered doubtful by the agency or if the claimant appeals from the agency's denial of his claim.

However, the procedures differ in cases where GAO has previously resolved an issue against the claimant other than the issue of whether the overtime was properly authorized or approved. Since we have overruled only those portions of pre-Taylor decisions which concern the standard for authorization and approval, the employing agency does not have authority to pay claims that involve additional issues which we have resolved against the claimant. Initially, such cases should be handled in accordance with the procedures generally applicable to requests for reconsideration. Until it appears to us that it may be appropriate to reverse our prior determination of an issue (other than proper authorization and approval), transmittal of the claim to the agency is not necessary since a developed record already exists. However, if it appears that the issue of proper authorization and approval may be determinative or if further facts with respect to another issue are desirable, the claim will be transmitted to the employing agency for further development.

Our decision disallowing the claims of Mr. Brandenburg and Mr. Johnson did not turn on a determination that the early reporting time was not properly authorized or approved, but rather on a determination that the required early reporting was offset by a paid lunch period. As indicated above, in circumstances where recovery has been previously disallowed by GAO for a reason other than a determination that the overtime was not authorized or approved, the claimant is not entitled to another adjudication of his entire claim solely on the basis that the standards for determining authorization have been altered by the Taylor decision. Accordingly, in the absence of any new evidence to indicate that the overtime allegedly performed by Mr. Brandenburg and Mr. Johnson was not offset by a paid lunch period, we reaffirm our prior decision disallowing their claims.

The claim of William E. Thompson was received directly from the claimant on April 1, 1974. Our Transportation and Claims Division (now Claims Division), by letter dated July 11, 1974, requested an administrative report from the Department of the Air Force. By letter dated November 1, 1974, the Division instructed the Department of the Air Force to disregard the request for an administrative report and to handle the claim "in accordance with decision of this Office, B-174080, et al., dated September 11, 1974, \* \* \* which provides that claims of this type should be settled by the employing agency except where there is doubt concerning the application of the Taylor standard to the facts of a particular case."

The claim was returned to GAO without prior administrative action and without a recommendation as to payment. With reference to B-174061, supra, personnel at Chanute Air Force Base stated: "On page 3 of the referenced decision the agency is instructed to forward disallowed claims to the Comptroller General for a decision." The agency is apparently misconstruing our instructions. Our instructions on page 3 of B-174061, supra, for forwarding disallowed claims concern appeals from pre-Baylor settlements. Only the part of page 3 of the decision that concerns the claim of Mr. Byron W. Mercer is pertinent to the handling of original claims which are not the subject of a pre-Baylor settlement. The procedures normally applicable to claims should be used in processing original overtime claims. As we stated in B-174062, supra, the standards for the payment of overtime compensation as set out in Baylor are clear. The employing agency should pay all claims in which it has no doubt as to the legality of payment under such standards. Similarly, if there is no doubt that the claim is for disallowance, the agency should disallow the claim. Only those claims that are considered doubtful or those involving an appeal from an administrative disallowance should be transmitted for a decision.

As indicated above, Air Force personnel apparently misconstrued B-174061, supra, and thought that they were required to submit original claims to GAO even if they were for disallowance. In the Thompson case the agency stated that the claim could be denied in absence of an official and approval order which is required in the statutes for payment of overtime pay and the lack of evidence that Mr. Thompson was "induced by his supervisor" to report early or leave late, as cited in the Baylor decision. The record also indicates that, although Mr. Thompson, a cook, was required to wear a "mess white" uniform, there was no requirement for early reporting and delayed leaving. In addition, food service employees had the option to wear uniforms to and from work. Therefore, the claim was not for allowance under the Baylor standards.

Accordingly, our denials of the claims of Mr. Brandenburg and Mr. Jonson are reaffirmed and the claim of Mr. Thompson is disallowed.

R. F. Keller

Deputy Comptroller General  
of the United States